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JOHN F. DAVIS, CLE

IN THE

Supreme Court of the United States

October Term, 1969

No. 1409

MEILAH BELL,

Petitioner,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,

Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Meilah Bell prays that this Court grant rehearing of its order of June 1, 1970, denying the petition for a writ of certiorari, and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, in the above entitled case, as prayed for in the petition filed on or about April 10, 1970.

Reasons for Granting Rehearing and Issuing the Writ

In his petition for certiorari herein, petitioner presented the following principal question:

> "Whether petitioner's prosecution for felonies in the United States District Court for the District of the Virgin Islands, instituted by the filing of an information by the United States Attorney, and not by indictment of a grand jury, violates petitioner's rights under the Fifth Amendment to the United

> States Constitution, which provides that 'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury'."

In the course of his argument under reasons for Granting the Writ (Pet. for Cert., pp. 9-12), petitioner argued that the Fifth Amendment to the Constitution required indictment by a grand jury for all felony charges in all United States District Courts, whether they be Article III courts or territorial courts established by act of Congress. The argument showed, through analysis and citation of the military jurisdiction cases (e.g., *Reid* v. *Covert,* 354 U.S. 1 (1957); *Kinsella* v. *Krueger,* 361 U.S. 234 (1960); *McElroy* v. *Guagliardo,* 361 U.S. 281 (1960)), that the original *Insular* cases (*Downes* v. *Bidwell,* 182 U.S. 244 (1901); *et al.*); *Dorr* v. *United States,* 195 U.S. 138 (1904); and *Balzac* v. *Porto Rico,* 258 U.S. 298 (1922), were all premised on the proposition that the constitutional safeguards of the Bill of Rights did not apply to citizens of the United States or resident aliens who are in unincorporated territories abroad from the continental United States; and that such premise was erroneous and not in keeping with the expanding scope of the constitutional protection of individuals under the Bill of Rights as to both the federal government and the states.

In its Brief in Opposition, the respondent argued that many years ago in the above cited cases, "this Court recognized that the provisions of the Bill of Rights are not automatically applicable to the territories for which, under Article 4, Section 3 of the Constitution, Congress is authorized to make rules and regulations" (pp. 4-5).

It is petitioner's argument that the *rationale* of these old cases is no longer valid and that their demise as authority was foreshadowed by the military jurisdiction cases, *supra.* It is no valid argument to repeat the old phrases that Congress provided for the existence of territorial

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courts and could enact rules and regulations for their operation. This argument fails to take into account that we are concerned with the scope and meaning of the Fifth Amendment to the Constitution as being applicable to all citizens of the United States, no matter where they happen to be, and that there should be uniformity in the administration of federal justice, not distinctions based upon the happenstance of the location of a person charged with criminal conduct.

It is by reason of the great importance of this constitutional question as to the scope and meaning of the grand jury and indictment clause of the Fifth Amendment that petitioner prays for rehearing herein.

CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully prayed and urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

DANIEL H. GREENBERG
Counsel for Petitioner

June 19, 1970

Certificate of Counsel

I, DANIEL H. GREENBERG, a member of the Bar of the Supreme Court of the United States, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Dated: June 19, 1970

DANIEL H. GREENBERG